

The State of New Hampshire

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March 12, 1974

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His Excellency, Meldrim Thomson, Jr.
and the Honorable Council
State House
Concord, New Hampshire 03301

Your Excellency and Gentlemen:

At your meeting on January 9, 1974, the Governor with a majority of the Council voted to transfer the sum of \$3,000 from the Operating Budget Contingent Fund to the Department of Resources and Economic Development for the purpose of contributing to a fund being raised to finance a trip by the Laconia High School Band to Ireland in the month of March, 1974. At your meeting on February 27, 1974 you requested an opinion from this office on the question whether your resolution of January 9 together with the action taken to implement it was authorized by the provision of law creating the Operating Budget Contingent Fund. It is our opinion that your action and the implementation of it were not authorized, and we hereby give our reasons for this conclusion.

An Operating Budget Contingent Fund, so-called, has been created by each Budget Act commencing with that for the fiscal year 1966 (1965 Laws, 239). Each year the appropriation comprising this fund has been footnoted to explain its purpose and the limitations upon its use. The footnote to the appropriation creating the fund in this fiscal year provides in relevant part that "[t]ransfers from this fund are subject to prior approval by the governor and council and may be made to all state agency appropriations, excluding only the governor and council." 1973 Laws, 376:3, I. Since the fund is called the "Operating" Budget Contingent Fund, it may be assumed that the footnote would not authorize a transfer to any capital budget appropriation, though it is not necessary to discuss that point in this opinion. It is relevant to note that a transfer may be made, by the terms of the footnote, only to "agency appropriations." It therefore

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becomes crucial to determine what is meant by an 'appropriation' in this context. We are persuaded that the term refers to a particular, line-item appropriation of the sort which together comprise the fiscal year budgets. The Budget Act for the present fiscal year provides that "sums hereinafter detailed in this act are ... appropriated ... for the purposes specified." 1973 Laws, 376:1. (Emphasis supplied.) This language suggests that an appropriation involves a specific sum to be used for a specified purpose. Although the Revised Statutes Annotated of this State do not contain an all-inclusive definition of "appropriation," usages of the word in certain contexts similar to that of the footnote lead to the same conclusion. RSA 4:18, for example, regulating the use of the Emergency Fund, provides that the fund shall consist of "such sums as may be appropriate for that purpose." (Emphasis supplied.) This usage indicates that what is appropriated is a sum to be used for an identified purpose. To the same point is the usage contained in RSA 9:16, regulating the transfer of monies as between appropriations, in referring to "the allotment in the appropriation ... for any specific purpose." RSA 9:17-a, I., limiting such transfers, speaks of the "use or purpose" of "appropriation items." It would be tedious to multiply examples. Those we have cited suggest to us very strongly that when the Legislature refers to "appropriations" it refers to appropriations of specific amounts for identified objects.

It follows that money which may be transferred from the Operating Budget Contingent Fund would be added to the amounts of specific or line-item appropriations. Funds could not be transferred simply to a department or to a department for use for any purpose for which funds could not be spent under a particular appropriation item of that agency. Contingent Fund money, in other words, can be used to increase the amount of an appropriation but it cannot be used to create a new appropriation.

The transfer voted on January 9, 1974 was made simply to "the Department of Resources and Economic Development." It was not made to any particular appropriation item of that agency. In implementing that vote, we have been informed that the amount of \$3,000 voted to be transferred was in fact simply placed in an account having no relation to any existing appropriation, but rather set up simply for the accounting purpose of the particular transfer. I assume that this action reflects the judgment by those who took it that no funds appropriated to the Department of Resources and Economic Development for this

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fiscal year could be used to contribute toward the expenses of the trip by the Laconia High School Band. In any event, unless an appropriation exists which by its terms could be used to finance such a trip, so that a transfer could be made to that appropriation item, monies from the Operating Budget Contingent Fund may not be used for this purpose.

Respectfully,

A large, flowing handwritten signature in black ink, reading "Warren B. Rudman".

Warren B. Rudman
Attorney General

A handwritten signature in black ink, reading "David H. Souter".

David H. Souter
Deputy Attorney General